

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CLINT S. MOSAY,

Plaintiff,

v.

OPINION & ORDER

13-cv-841-wmc

EDWARD F. WALL *et al.*,

Defendants.

On January 8, 2015, the court screened plaintiff Clint S. Mosay's lawsuit pursuant to the Prison Litigation Reform Act ("PLRA"), 28 U.S.C. § 1915A. (*See* Jan. 8, 2015 Opinion & Order (dkt. #8).) It concluded that Mosay had stated some viable claims under the Eighth Amendment but that those claims were improperly joined and ordered Mosay to inform the court whether he wished to proceed with:

- (a) his Eighth Amendment excessive force claim against Hoegger and Eighth Amendment failure to protect claim against Wisniewski; **OR**
- (b) his Eighth Amendment excessive force claim against Swiekatowski and Taerud, harassment claims against Swiekatowski, Taerud and Frisch, and his Eighth Amendment failure to protect claim against Van Lanen.

(*Id.* at 22.)

In a brief letter dated January 25, 2015, Mosay responded to the court's order that he elect a single set of claims to litigate in this suit. He advised the court of his intention to pursue the first set of claims -- that is, his claims against Hoegger and Wisniewski. (*See* Pl.'s Resp. (dkt. #9).) Having already screened those claims to go forward, the court will, therefore, grant Mosey leave to proceed against those two defendants. The other set of claims will be dismissed without prejudice.

Mosay's letter also requests "leave to seek representation in this matter." (*Id.*) To the extent that Mosay wishes to continue to attempt to find counsel willing to take his case, he may do so as a matter of course without this court's intervention. Indeed, inmates proceeding *in forma pauperis* are *required* to make such attempts before they may ask the court to seek volunteer counsel on their behalf. *Jackson v. County of McLean*, 953 F.2d 1070, 1072-73 (7th Cir. 1992).

If, however, Mosay means to ask that the *court* assist him in seeking counsel at this time, that request must be denied. There is no constitutional right to appointed counsel in a civil case. *Caruth v. Pinkney*, 683 F.2d 1044, 1048 (7th Cir. 1982). Furthermore, although the court has the discretion under the *in forma pauperis* statute to recruit a volunteer to assist an indigent civil litigant in an appropriate case, 28 U.S.C. § 1915(e)(1), Mosay is not, in fact, proceeding *in forma pauperis* in this matter. In fact, there is no evidence in the record to show that Mosay is "unable to afford counsel." *Id.* Accordingly, any request for the court's intervention will be denied at the present time.

Should Mosay wish to make a proffer establishing he is unable to afford counsel, he may do so by filling out the paperwork to proceed *in forma pauperis* (enclosed with this order) or by submitting some other form of evidence. Additionally, Mosey should be aware that the court will exercise its discretion to recruit a volunteer only if "the difficulty of the case – factually and legally – exceeds the particular plaintiff's capacity as a layperson to coherently present it to the judge or jury himself." *Pruitt v. Mote*, 503 F.3d 647, 655 (7th Cir. 2007); *see also Jackson v. County of McLean*, 953 F.2d 1070, 1072 (7th Cir. 1992) (discussing factors to consider in determining whether it is appropriate to recruit pro bono

counsel for an indigent civil litigant). At this juncture, Mosey has also not made this showing.

ORDER

IT IS ORDERED that:

- 1) Plaintiff Clint Mosay is GRANTED leave to proceed on his Eighth Amendment excessive force claim against Hoegger and Eighth Amendment failure to protect claim against Wisniewski, consistent with this court's previous screening order (dkt. #8).
- 2) Plaintiff's Eighth Amendment excessive force claim against Swiekatowski and Taerud, harassment claims against Swiekatowski, Taerud and Frisch, and his Eighth Amendment failure to protect claim against Van Lanen are DISMISSED without prejudice.
- 3) Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on the defendants. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint if it accepts service for defendant.
- 4) For the time being, plaintiff must send defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendants or to defendant's attorney.
- 5) Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.
- 6) Plaintiff's request for assistance in recruiting counsel (dkt. #9) is DENIED without prejudice.

Entered this 9th day of February, 2015.

BY THE COURT:

/s/

WILLIAM M. CONLEY

District Judge